



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 117**

**[Docket No. USCG-2020-0647]**

**RIN 1625-AA09**

### **Drawbridge Operation Regulation; New Jersey Intracoastal Waterway, Point Pleasant, NJ**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Route 88 (Veterans Memorial) Bridge and Route 13 (Lovelandtown) Bridge across the New Jersey Intracoastal Waterway (NJICW) at Point Pleasant Canal, mile 3.0 and 3.9, respectively at Point Pleasant, NJ. This proposed modification will allow the drawbridges to be maintained in the closed position overnight.

**DATES:** Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0647 using Federal e-Rulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Mickey Sanders, Bridge Administration Branch, Fifth District, U.S. Coast Guard, telephone (757) 398-6587, email [Mickey.D.Sanders2@uscg.mil](mailto:Mickey.D.Sanders2@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
NJICW	New Jersey Intracoastal Waterway

### **II. Background, Purpose and Legal Basis**

The New Jersey Department of Transportation, which owns and operates the Route 88 (Veterans Memorial) Bridge and Route 13 (Lovelandtown) Bridge, across the NJICW at Point Pleasant Canal, mile 3.0 and 3.9, respectively, at Point Pleasant, NJ, has requested this modification to reduce the number of bridge openings during off-peak hours.

The Route 88 (Veterans Memorial) Bridge across the NJICW at Point Pleasant Canal, mile 3.0, at Point Pleasant, NJ, has a vertical clearance of 10 feet above mean high water in the closed-to-navigation position. The bridge currently operates under **33 CFR 117.5**.

The Route 13 (Lovelandtown) Bridge across the NJICW at Point Pleasant Canal, mile 3.9, at Point Pleasant, NJ, has a vertical clearance of 30 feet above mean high water in the closed-to-navigation position. The bridge currently operates under **33 CFR 117.5**.

The Point Pleasant Canal is used predominately by recreational vessels and pleasure craft. The three-year average number of bridge openings, maximum number of bridge openings, and bridge openings between 11 p.m. to 7 a.m., by month and overall for August 2017, through August 2020, as drawn from the data contained in the bridge

tender logs, is presented below. There is a monthly average of two bridge openings for each bridge, from 11 p.m. to 7 a.m., from August 2017 to August 2020.

<b>Month</b>	<b>Average Openings</b>	<b>Maximum Openings</b>	<b>Proposed Openings 11 p.m. – 7 a.m.</b>
January	4	14	0
February	2	7	0
March	7	21	0
April	24	72	2
May	51	154	6
June	74	223	18
July	125	376	20
August	101	407	20
September	63	190	8
October	51	155	6
November	29	89	7
December	16	49	1

### **III. Discussion of Proposed Rule**

The bridge owner has requested to modify the operating regulation for the bridges, due to the limited number of requested openings of the bridges from 11 p.m. to 7 a.m., over a period of approximately three years. The data presented in the table above demonstrates that the requested modification may be implemented with de minimis impact to navigation. This proposed modification will allow the drawbridges to be maintained in the closed position from 11:01 p.m. to 6:59 a.m. and shall open on signal, if at least four hours advance notice is given.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and

Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that an average of only two bridge openings occurred per month from 11 p.m. to 7 a.m., from August 2017 through August 2020.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridges may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on

it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person

listed in the FOR FURTHER INFORMATION CONTACT section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT

section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security

Delegation No. 0170.1.

2. Amend § 117.733 as follows:

- a. Remove paragraphs (i) and (k);

- b. Redesignate paragraphs (b) through (h) and (j) as paragraphs (d) through (k), respectively; and

- c. Add new paragraphs (b) and (c).

The additions read as follows:

### **§ 117.733 New Jersey Intracoastal Waterway.**

\* \* \* \* \*

(b) The draw of the Route 88 Bridge, mile 3.0, across Point Pleasant Canal at Point Pleasant, shall operate as follows:

- (1) From 7 a.m. to 11 p.m. the draw shall open on signal.

- (2) From 11:01 p.m. to 6:59 a.m. the draw shall open on signal, if at least four hours advance notice is given.

(c) The draw of the Route 13 Bridge, mile 3.9, across Point Pleasant Canal at Point Pleasant, shall operate as follows:

- (1) From 7 a.m. to 11 p.m. the draw shall open on signal.

- (2) From 11:01 p.m. to 6:59 a.m. the draw shall open on signal, if at least four hours advance notice is given.

\* \* \* \* \*

Dated: March 5, 2021.



L. M. Dickey,

Rear Admiral, U.S. Coast Guard,

Commander, Fifth Coast Guard District.

[FR Doc. 2021-05154 Filed: 3/25/2021 8:45 am; Publication Date: 3/26/2021]